
A BILL FOR AN ACT

RELATING TO WIND ENERGY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Renewable energy resources offer Hawaii
2 important economic, environmental, and energy security benefits,
3 especially since Hawaii's dependency on petroleum is the highest
4 in the nation, accounting for approximately ninety per cent of
5 the state's energy needs. Petroleum dependency makes Hawaii
6 consumers extremely vulnerable to any oil embargo, supply
7 disruption, international market dysfunction, and many other
8 factors beyond Hawaii's control.

9 Recognizing the importance and economic and environmental
10 benefits of increasing energy self-sufficiency, the legislature
11 and the department of business, economic development, and
12 tourism have, over the past four years, committed to energy
13 objectives that would achieve dependable, efficient, and
14 economical statewide energy systems, increased self-sufficiency,
15 greater energy security, and reduction of greenhouse gas
16 emissions.

17 Act 272, Session Laws of Hawaii 2001, recognized the
18 economic, environmental, and fuel diversity benefits of



1 renewable energy resources and the need to encourage the
2 establishment of a market for renewable energy in Hawaii using
3 the state's renewable energy resources. Act 240, Session Laws
4 of Hawaii 2006, provided a framework for energy self-
5 sufficiency. The State has also committed to a renewable energy
6 standard, where twenty per cent of electricity sold will be
7 generated from renewable resources by the end of 2020 and has
8 sought to encourage private sector development of renewable
9 energy projects.

10 However, renewable energy projects are often complex,
11 large-scale undertakings requiring a number of permits. The
12 process for obtaining the necessary permits for renewable energy
13 projects and developments and the process for meeting state,
14 county, and federal regulations has for decades been described
15 as overly time-consuming, cumbersome, onerous, and costly. In
16 fact, the "Hawaii Integrated Energy Policy Report" of 1991 found
17 that the permit and approval process required for the
18 development and siting of energy facilities for a single project
19 can take up to seven years to complete. Thus, the inefficiency
20 of the permitting and development process acts as a barrier to
21 meeting Hawaii's renewable energy goals.



1 Understanding that renewable energy projects can provide
2 substantial and long-term benefits to the state and that
3 development of renewable energy projects would further state
4 policies of developing indigenous renewable energy resources and
5 decreasing Hawaii's dependency on imported fossil fuels, the
6 legislature finds that there is a need to streamline the
7 permitting process to provide predictability and to encourage
8 private companies to commit substantial amounts of capital,
9 time, and effort necessary to develop such projects.

10 The purpose of this Act is to improve the permitting
11 process required for the development of a wind energy project
12 that would use an undersea cable to transmit electricity between
13 islands.

14 The department of business, economic development, and
15 tourism shall be charged with the responsibility over the
16 permitting process.

17 SECTION 2. The Hawaii Revised Statutes is amended by
18 adding a new chapter to be appropriately designated and to read
19 as follows:

20 "CHAPTER

21 WIND ENERGY AND UNDERSEA CABLE SYSTEM DEVELOPMENT



1 § -1 **Short title.** This chapter shall be known and may
2 be cited as the Wind Energy and Undersea Cable System
3 Development Permitting Act.

4 § -2 **Definitions.** As used in this chapter, unless the
5 context clearly requires otherwise:

6 "Agency" means any department, office, board, or commission
7 of the State or a county government, but does not include the
8 state legislature.

9 "Applicant" means any person who, pursuant to statute,
10 ordinance, rule, or regulation, requests any approval or permit
11 required for a proposed project.

12 "Approval" means a discretionary consent required from an
13 agency prior to the actual implementation of a project.

14 "Department" means the department of business, economic
15 development, and tourism.

16 "Discretionary consent" means a consent, sanction, or
17 recommendation from an agency for which judgment and free will
18 may be exercised by the issuing agency, as distinguished from a
19 ministerial consent.

20 "Environmental impact statement" means, as applicable, an
21 informational document prepared in compliance with chapter 343



1 or with the National Environmental Policy Act of 1969 (Public
2 Law 91-190).

3 "Interagency group" means the body established pursuant to
4 section -5.

5 "Permit" means any license, permit, certificate,
6 certification, approval, compliance schedule, or other similar
7 document or decision pertaining to any regulatory or management
8 program that is related to the protection, conservation, use of,
9 or interference with the natural resources of land, air, or
10 water in the state and that is required prior to or in
11 connection with the undertaking of the project.

12 "Person" includes any individual, partnership, firm,
13 association, trust, estate, corporation, joint venture,
14 consortium, or other legal entity other than an agency.

15 "Project" means the commercial development, construction,
16 installation, financing, operation, maintenance, repair, and
17 replacement, including without limitation all applicable
18 exploratory, testing, and predevelopment activities related to
19 the foregoing, of:

- 20 (1) A wind energy facility, including all associated
- 21 buildings, structures, other improvements, equipment,
- 22 wells, and transmission lines, on any island in the



1 State of Hawaii for the purpose of generating electric
2 energy for transmission primarily to the island of
3 Oahu through the cable system; and

- 4 (2) An interisland deep water electrical transmission
5 cable system, including all land-based transmission
6 lines and other ancillary facilities, to transmit wind
7 generated electric energy from any neighbor island in
8 the State of Hawaii to the island of Oahu, regardless
9 of whether the cable system is used to deliver
10 electric energy to any intervening point.

11 § -3 Project permit application and review process. (a)

12 The department is designated as the lead agency for the purposes
13 of this chapter and, in addition to its existing functions,
14 shall establish and administer the project permit application
15 and review process provided for in this chapter.

16 (b) The project permit application and review process
17 shall incorporate:

- 18 (1) A list of all permits required for the project;
19 (2) The role and functions of the department as the lead
20 agency and the interagency group;
21 (3) All permit review and approval deadlines;



- 1 (4) A schedule for meetings and actions of the interagency
2 group;
- 3 (5) A mechanism to resolve any conflicts that may arise
4 between or among the department and any other
5 agencies, including any federal agencies, as a result
6 of conflicting permit, approval, or other
7 requirements, procedures, or agency perspectives;
- 8 (6) Any other administrative procedures related to the
9 foregoing; and
- 10 (7) A project permit application form to be used for the
11 project for all permitting purposes.
- 12 (c) The department shall perform all of the permitting
13 functions for which it is currently responsible and shall
14 coordinate the concurrent review of the listed permits in
15 section -9 by agencies with jurisdiction over the project.
16 This review process shall include to the fullest extent possible
17 all federal agencies having jurisdiction over any aspect of the
18 project.
- 19 (d) All project permits identified in the project permit
20 application and review process shall be processed and either
21 denied or approved no later than twenty-four months after the



1 date that the project permit application is filed and deemed
2 accepted by the department.

3 § -4 Project permit application, review, and approval
4 process; implementation. (a) The department shall serve as the
5 lead agency for the project permit application and review
6 process established pursuant to section -3 and as set forth
7 in this section for the project. All relevant agencies with
8 jurisdiction over the project shall be required to participate
9 in the project permit application and review process.

10 (b) To the greatest extent possible, the department and
11 each agency with jurisdiction over the project shall complete
12 all of their respective permitting functions for the purposes of
13 the project in accordance with the timetable for regulatory
14 review set forth in the joint agreement described in subsection
15 (c)(3) and within the time limits contained in the applicable
16 permit statutes, ordinances, rules, or federal regulations;
17 except that the department or any agency shall have good cause
18 to extend, if and as permitted, the applicable time limit if the
19 permit-issuing agency relies on another agency, including any
20 federal agency, for all or part of the permit processing and the
21 delay is caused by the other agency.

22 (c) The procedure shall be as follows:



- 1 (1) The applicant shall submit the project permit
2 application using the project permit application form
3 that shall include whatever data about the proposed
4 project that the department deems necessary to fulfill
5 the purposes of this chapter and to determine which
6 other agencies may have jurisdiction over any aspect
7 of the proposed project;
- 8 (2) Upon receipt of the project permit application, the
9 department shall notify all agencies with jurisdiction
10 over the project, as well as all federal agencies that
11 the department determines may have jurisdiction over
12 any aspect of the proposed project as set forth in the
13 application and shall invite the federal agencies so
14 notified to participate in the project permit
15 application process. The agencies, and those federal
16 agencies that accept the invitation, thereafter shall
17 participate in the project permit application and
18 review process;
- 19 (3) The representatives of the department and the state,
20 county, and federal agencies and the applicant shall
21 develop and sign a joint agreement among themselves
22 that shall:



- 1 (A) Identify the members of the project permit
2 application, review, and approval team;
- 3 (B) Identify all permits required for the project;
- 4 (C) Specify the regulatory and review
5 responsibilities of the department and each
6 state, county, and federal agency and set forth
7 the responsibilities of the applicant;
- 8 (D) Establish a timetable for regulatory review, the
9 conduct of necessary hearings, the preparation of
10 any necessary environmental assessment or
11 environmental impact statement, and other actions
12 required to minimize duplication and to
13 coordinate and consolidate the activities of the
14 applicant, the department, and the state, county,
15 and federal agencies; and
- 16 (E) Provide that a hearing required for a particular
17 permit shall be held on the islands where the
18 proposed activity shall occur. To the extent
19 practicable, the department shall consolidate any
20 hearings required for all permits that shall be
21 required for the application;



- 1 (4) A project permit application, review, and approval
2 team shall be established and shall consist of the
3 members of the interagency group established pursuant
4 to section -5. The applicant shall designate its
5 representative to be available to the review team, as
6 it may require, for purposes of processing the
7 applicant's consolidated permit application;
- 8 (5) The project permit application, review, and approval
9 process shall not affect or invalidate the
10 jurisdiction or authority of any agency under existing
11 law;
- 12 (6) The applicant shall apply directly to each federal
13 agency that does not participate in the project permit
14 application, review, and approval process;
- 15 (7) The department shall review for completeness and
16 thereafter shall process the project permit
17 application submitted by an applicant for the project
18 and shall monitor the processing of any permit
19 applications by agencies with jurisdiction over the
20 project. The department shall coordinate and seek to
21 consolidate where possible the permitting functions
22 and shall monitor and assist in the permitting



1 functions conducted by all agencies with jurisdiction
2 over the project and, to the fullest extent possible,
3 the federal agencies in accordance with the project
4 permit application, review, and approval process; and

5 (8) Once the processing of the project permit application
6 has been completed and all permits required for the
7 project have been issued to the applicant, the
8 department shall monitor the applicant's work
9 undertaken pursuant to the permits to ensure the
10 applicant's compliance with the terms and conditions
11 of the permits.

12 (d) Where the contested case provisions under chapter 91
13 apply to any one or more of the permits to be issued by the
14 department or any agency for the purposes of the project, the
15 department or agency, if there is a contested case involving any
16 of the permits, may be required to conduct only one contested
17 case hearing on the permit or permits within its jurisdiction.
18 Any appeal from a decision made by the department or agency
19 pursuant to a public hearing or hearings required in connection
20 with a permit shall be made directly on the record to the
21 intermediate court of appeals, subject to chapter 602.



1 § -5 Interagency group. (a) The department shall
2 establish an interagency group comprised of those agencies with
3 jurisdiction over the project. Each of these agencies shall
4 designate an appropriate representative to serve on the
5 interagency group as part of the representative's official
6 responsibilities. The interagency group shall perform liaison
7 and assistance functions as required by this chapter and the
8 department. The department shall invite and encourage the
9 appropriate federal agencies having jurisdiction over any aspect
10 of the project to participate in the interagency group.

11 (b) The department and agencies shall cooperate with the
12 federal agencies to the fullest extent possible to minimize
13 duplication between and, where possible, promote consolidation
14 of federal and state requirements. To the fullest extent
15 possible, this cooperation shall include among other things
16 joint environmental impact statements with concurrent public
17 review and processing at both levels of government. Where
18 federal law has requirements that are in addition to but not in
19 conflict with state law requirements, the department and the
20 agencies shall cooperate to the fullest extent possible in
21 fulfilling their requirements so that all documents comply with
22 all applicable laws.



1 § -6 Streamlining activities. In administering the
2 project permit application, review, and approval process, the
3 department shall:

4 (1) Monitor all permit applications submitted under this
5 chapter and the processing thereof on an ongoing basis
6 to determine the source of any inefficiencies, delays,
7 and duplications encountered and the status of all
8 permits in process;

9 (2) Adopt and implement needed streamlining measures
10 identified by the interagency group, in consultation
11 with members of the public:

12 (3) Design, in addition to the project permit application
13 form, other applications, checklists, and forms
14 essential to the implementation of the project review
15 and approval process;

16 (4) Recommend to the legislature, as appropriate,
17 suggested changes to existing laws to eliminate any
18 duplicative or redundant permit procedures or
19 requirements;

20 (5) Coordinate with agencies to ensure that all standards
21 used in any agency decision-making for any required
22 permits are clear, explicit, and precise; and



1 (6) Incorporate, where possible, rebuttable presumptions
2 based upon requirements met for permits issued
3 previously under the consolidated permit application,
4 review, and approval process.

5 § -7 Information services. The department shall:

- 6 (1) Operate a permit information and coordination center
7 during normal working hours, which shall provide
8 guidance with regard to the permits and procedures
9 that may apply to the project; and
- 10 (2) Maintain and update a repository of the laws, rules,
11 procedures, permit requirements, and criteria of
12 agencies whose permitting functions are not
13 transferred by section -9 to the department for the
14 purposes of the project and that have control or
15 regulatory power over any aspect of the project and of
16 federal agencies having jurisdiction over any aspect
17 of the project.

18 § -8 Construction of the chapter; rules. This chapter
19 shall be construed liberally to effectuate its purposes, and the
20 department shall have all powers that may be necessary to carry
21 out the purposes of this chapter, including the authority to
22 make, amend, and repeal rules to implement this chapter;



1 provided that all procedures for public information and review
2 under chapter 91 shall be preserved; and provided further that
3 the consolidated permit application, review, and approval
4 process, except as provided in this chapter, shall not affect or
5 invalidate the jurisdiction or authority of any agency under
6 existing law. The adoption, amendment, and repeal of all rules
7 shall be subject to chapter 91.

8 § -9 **Applicable permits to be included in the project**
9 **permit application process.** (a) The project permit application
10 process shall include but not be limited to the following
11 permits:

12 (1) From the land use commission: Any district boundary
13 amendment involving land areas greater than fifteen
14 acres (section 205-4);

15 (2) From the department of business, economic development,
16 and tourism: federal consistency review required for
17 activity within the coastal zone (section 205A-3);

18 (3) From the department of health:

19 (A) Water quality certification for discharge into
20 navigable waters (part III of chapter 342D); and

21 (B) Storm water discharge permit (part III of chapter
22 342D);



- 1 (4) From the department of land and natural resources:
- 2 (A) Conservation district use permit (section
- 3 183C-6);
- 4 (B) Ocean dredging, filling, or construction permit
- 5 (section 183C-6);
- 6 (C) Ocean lease, right-of-entry, or revocable permit
- 7 for activity on state-owned lands, including
- 8 submerged lands and sub-surface marine waters
- 9 (section 190D-21);
- 10 (D) Incidental taking of a threatened or endangered
- 11 species license (section 195D-4);
- 12 (E) Stream channel alteration permit (section
- 13 174C-71);
- 14 (F) Well construction and pump installation permit
- 15 (section 174C-84);
- 16 (G) Historic property, aviation artifact, or burial
- 17 site review (section 6E-42);
- 18 (H) Burial sites and human remains discovery (section
- 19 6E-43.6);
- 20 (I) Historic site review (section 6E-8);
- 21 (5) From the public utilities commission:
- 22 (A) Power purchase agreement (section 269-27.2); and



- 1 (B) High voltage transmission line development
- 2 (chapter 269);
- 3 (6) From the county of Maui:
- 4 (A) Community plan and zoning requirements ();
- 5 (B) Special use permit ();
- 6 (C) Special management area use permit ();
- 7 (D) Shoreline setback variance ();
- 8 (E) Planned development approval (); and
- 9 (F) Subdivision, grubbing, grading, and building
- 10 permits ();

11 and

- 12 (7) From the city and county of Honolulu:
- 13 (A) Development plan and zoning requirements
- 14 (); and
- 15 (B) ().

16 (b) Nothing in this section shall be construed to relieve
 17 an applicant from the laws, ordinances, and rules of any agency
 18 whose functions are not transferred by this section to the
 19 department for the purposes of the project.

20 (c) Except as provided in subsection (a)(5), this section
 21 shall not apply to any permit issued by the public utilities
 22 commission under chapter 269.



1 § -10 **Annual report.** No later than twenty days prior to
2 the convening of each regular session, the department shall
3 submit an annual report to the governor and legislature on its
4 work during the preceding year, the development status of the
5 project, any problems encountered, and any legislative actions
6 that may be needed further to improve the consolidated permit
7 application, review, and approval process and implement the
8 intent of this chapter.

9 § -11 **Severability.** If any provision of this chapter or
10 the application thereof to any person or circumstances is held
11 invalid, the invalidity shall not affect other provisions or
12 applications of this chapter that can be given effect without
13 the invalid provision or application, and to this end the
14 provisions of this chapter are declared severable.

15 § -12 **Exemptions from certain state laws.** To promote
16 the purposes of this chapter, all persons hired by the
17 department to effectuate this chapter are exempted from chapters
18 76 and 89."

19 SECTION 3. There is appropriated out of the general
20 revenues of the State of Hawaii the sum of \$ so much
21 thereof as may be necessary for fiscal year 2008-2009 for the
22 establishment of the project permit application, review, and



1 approval process for wind energy and undersea cable system
2 development.

3 There is appropriated out of the general revenues of the
4 State of Hawaii the sum of \$ or so much thereof as may
5 be necessary for fiscal year 2008-2009 for the establishment of
6 one full-time equivalent (1.00 FTE) permanent renewable energy
7 facilitator position in the department of business, economic
8 development, and tourism to facilitate the efficient permitting
9 of renewable energy projects through the project permit and
10 review process and to initiate the implementation of key
11 renewable energy projects permitting efficiency improvement
12 strategies identified by the department of business, economic
13 development, and tourism.

14 The sums appropriated shall be expended by the department
15 of business, economic development, and tourism for the purposes
16 of this Act.

17 SECTION 4. This Act shall take effect on July 1, 2025.



H.B. NO. 2862
H.D. 2
S.D. 1

Report Title:

Wind Energy; Undersea Cable

Description:

Establishes a coordinated process for the approval of permits for an interisland wind energy and undersea cable project. (SD1)

